

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14350, of Warren W. Lenhart, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the prohibition allowing an addition to a nonconforming structure now exceeding the lot occupancy requirements (Sub-section 7105.12), the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7105.12) and the open court width requirements (Sub-section 3306.1 and Paragraph 7105.12) for the proposed enlargement of an existing rear deck in a CAP/R-4 District at premises 309 Constitution Avenue, N.E., (Square 785, Lot 25).

HEARING DATE:       OCTOBER 23, 1985  
DECISION DATE:     November 6, 1985

FINDINGS OF FACT:

1. The subject site, known as premises 309 Constitution Avenue, N.E. is located on the south side of Constitution Avenue between 3rd and 4th Streets. It is in the CAP/R-4 District.

2. The subject site is rectangular in shape with a frontage of 15.36 feet along Constitution Avenue and a twenty foot wide public alley in the rear. It has a depth of ninety-five feet.

3. The subject structure is improved with a three story brick structure built circa 1880. The site became nonconforming on May 12, 1958, the effective date of the current Zoning Regulations. The structure houses three apartment units.

4. The CAP/R-4 District extends in all directions from the subject site.

5. The applicant, pursuant to Paragraph 8207.11 of the Zoning Regulations, seeks variances from the prohibition allowing an addition to a nonconforming structure now exceeding the lot occupancy requirements (Sub-section 7105.12), the lot occupancy requirements (Sub-section 3303.1 and Paragraph 7105.12) and the open court width requirements (Sub-section 3306.1 and Paragraph 7105.12) for the proposed enlargement of an existing rear deck.

6. Paragraph 8207.11 authorizes the BZA to grant an area variance where by reason of exceptional narrowness,

shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this Act would result in peculiar and exceptional practical difficulties to the owner of such property provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and map.

7. The previous porch at the rear of the subject structure was removed since it was dilapidated and unrepairable.

8. The previous porch projected five feet six inches into the rear yard and was ten feet nine inches wide. It was enclosed on two sides and had a roof. Steps extended into the yard from the rear of the porch.

9. The proposed decks, one at both the second and third levels, will project nine feet, nine inches into the rear yard and be ten feet wide. They will have railings at the rear and sides but will not be enclosed. For security reasons, there will be no stairs extending into the rear yard.

10. The proposed decks will project three feet four inches further into the rear yard than the previous porch did.

11. The nonconforming subject structure exceeds the allowed lot occupancy percentage by 205.38 feet and does not meet the open court width requirement of six feet. The open court width is now 4.5 feet and 1.5 feet requiring a variance of seventy-five percent and twenty-five percent respectively.

12. The proposed decks will cause the structure to exceed the lot occupancy requirement by an additional 52.22 feet for a total variance request of 257.64 or 29.43 percent.

13. Any addition to the structure, including replacing the original porch, will require variance relief.

14. The construction of the proposed addition is substantially completed. The supporting posts have been set in concrete and the first deck was constructed.

15. To construct the deck, the applicants hired a contractor who did not obtain zoning approval or a building permit for the subject addition.

16. Because of their open design, the decks do not obstruct light and air as much as the previous porch did.

17. The rear facade of the subject structure was designed to accommodate porches and has three doors, one at each level.

18. By letter dated October 15, 1985, the Zoning Committee of the Capitol Hill Restoration Society, Inc. reported that it voted to oppose the extension of the nonconforming structure at the subject site since the applicant has not demonstrated that there are exceptional practical difficulties or exceptional and undue hardship arising out of the nature of the property. The area already contains a number of properties exceeding lot occupancy standards. Light and air in the alley area are already at a premium. Since the old deck was removed and a variance is required to replace it the committee would not oppose the rebuilding of the porches that were there. The Board concurs that the new decks should not exceed the dimensions of the original porch.

19. By letter dated October 22, 1985, the Stanton Park Neighborhood Association's Land Use Committee reported that it had voted to oppose the subject application noting that the new deck will be larger than the original structure which itself is a nonconforming structure.

20. The Commissioner for Advisory Neighborhood Commission Single Member District 6A14 testified at the public hearing that she agreed with the position of the restoration Society to support the rebuilding of the decks to the dimensions of the original porch.

21. A neighboring property owner submitted a letter to the record in opposition to the subject application. He stated that the structure has constituted an undesirable obstacle to sunlight on both the adjacent properties because of the distance to which it extended to the rear of the lot. The problem was somewhat lessened when the wooden stairway at the rear was demolished. But, it appears that the second floor deck will again increase the undesirable shading. The Board finds that the new decks as conditioned below will provide more light and air than the original porch and will not have significant negative impacts on adjacent properties.

#### CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking area variances, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional narrowness, shallowness, shape or topographical conditions. The

Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent of the zone plan.


The Board concludes that the applicant has met the burden of proof. The subject lot has been a nonconforming lot since May 12, 1958. It currently exceeds the allowed lot occupancy and does not have the minimum open court yard width required. The building was designed to accommodate decks and has doors on the rear facade at all three levels. Any addition to the structure including replacing the original porch, will require variance relief. However, the Board finds that the expansion of the previous deck dimensions is not justifiable under the Zoning Regulations.

The Board concludes that granting the proposed relief will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan. Accordingly, it is hereby ORDERED that the application is GRANTED, SUBJECT to the CONDITION that construction shall not exceed the dimensions of the previously existing porch as shown on the plat marked as Exhibit No. 3 of the record.

VOTE: 4-0 (Patricia N. Mathews, Charles R. Norris, William F. McIntosh and Carrie L. Thornhill to grant; Douglas J. Patton not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
CECIL B. TUCKER  
Acting Executive Director

FINAL DATE OF ORDER: 19 FEB 1986

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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